

TONOPAH DAILY BONANZA

Published Every Morning, Monday Excepted, at Tonopah, Nevada



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Member of Associated Press

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One year	\$12.00	Three months	\$ 3.50
Nine months	10.00	One month	1.25
Six months	6.75	One week35

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Subscriptions by mail must be paid in advance.

Entered at the Postoffice in Tonopah as second class matter.

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COURT RENDERS STOCK DECISION

(Continued From Page Two.)

are general and settled rules and bind the courts of the state in dealing with foreign corporations. 1 Machen on Corporations, 715 to 717.

The discussion has been complicated somewhat by the fact that there exists in some states a third class of corporations, which may be conveniently called "domesticated" corporations, being foreign corporations that have been forced to attempt the status of domestic corporations by positive legislative act. It has been argued earnestly that this class of corporations exists in this state, on the principle that a corporation engaged in business in this state submits to the laws of this state and the jurisdiction of its courts. Without complete domestication by legislative declaration the courts have not accepted this doctrine, except in a limited extent. The tendency is to treat them as foreign corporations, as citizens of the states of their creation, not citizens of this state. Our legislature has not yet created any "domesticated" corporations, so we may dismiss them from our discussion, and thus eliminate some of the cases cited that deal with this class.

Many other cases cited are eliminated by distinguishing between debts due from corporations to individuals and shares of stock shown by the books of the corporation to be owned by individuals. This has been discussed and a substantial difference shown, arising out of the fact that the corporation has in the case of issued stock really parted with the property the legislatures have declared the shares to be. When property in the hands of a corporation is attached it is held by the corporation to await the outcome of the suit; when a debt from a corporation is garnished the same course is followed—it is paid only in accordance with the outcome of the proceedings against the person to whom it is due. In neither of these cases is the corporation embarrassed at all nor are any of its rights jeopardized. But if it has issued the stock it has parted with a certain property that it retains only a limited control over; there is nothing left in its hands to attach except certain rights that it has withheld for its own protection.

"Garnishment at law, as to shares of stock, is not the same thing as garnishment of a debt owing by the company, or of property held by it in bond." Ashley versus Quintard, 90 Fed. 84.

It is contended that in this proceeding the plaintiff adopted attachment and binds all persons. These attachment and not garnishment as his method of reaching the stock. The distinction between the two is not great as it was at one time, and if we adopt that difference as stated in 62 Pac. 977, the method used was garnishment, while in California it may be described by either term. 43 Pac. 1111. The expression used in the Quintard case cited above is: "The attachment was served * * * by garnishment," so it seems that as to that case no distinction need be applied, for it was the same kind of attachment as used in the cases before us.

While the general rule is that a foreign corporation which is amenable to process in another state may be subject to garnishment there for anything it holds within the state, or for any debt it owes generally to the principal debtor, and not specially in another place, it cannot, without special legislation to that end, be reached by garnishment of the stock of a member." Ashley versus Quintard, 90 Fed. 84.

In conclusion the following passages are quoted from authorities to indicate the modern views of the property value of certificates of stock and the recognition of the bearing of public policy against the necessity for registration:

"Delivery does not invest the transfer with the ownership of the shares in the sense that no further act is required to perfect his right. Notwithstanding his having parted with the certificate and transfer, the original transferor, who is entered as owner in the certificate and register, continues to be the only shareholder recognized by the company as entitled to vote

and draw dividends in respect of the shares, until the transferee or holder for the time being obtains registration in his own name. It would, therefore, be more accurate to say that such delivery passes, not the property of the shares, but a title, legal and equitable, which will enable the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from the registered owner." Lord Watson in Colonial Bank versus Cadz, a case relating to transfer of American shares, decided in 1890.

"Some American authorities state that delivery of the certificates with the endorsed transfer confers only an equitable right; but whilst such delivery may convey only equitable title to the shares it does confer some legal as well as equitable rights. The conflict between the various authorities upon this point is largely a dispute about words." 1 Machen on Corporations,

695. "As between a transferee and an attaching creditor of the transferor, it would seem to be immaterial whether the legal title or only an equitable right as passed by the transferee. In either case, the attaching creditor, not being a purchaser for value, should be subordinated to a prior transferee." 1 Machen on Corporations, 715. (1908).

"It may be added, in regard to this whole subject, that the decisions and statutes of the various states show clearly that public policy and the legitimate demands of trade have gradually caused the courts and the legislatures of the various states to establish the rule that a sale or pledge of certificates of stock has precedence over a subsequent attachment levied on that stock for the debt of the vendor, and that the failure of the purchaser or pledgee of the certificate to obtain registry on the corporate books is not fatal to his interest in the stock. In the great commercial centers, where certificates of stock pass from hand to hand, and are pledged to banks and financial institutions daily to secure great sums of money, the necessity of such a rule is imperative." Cook on Corporations, section 490.

"The decided weight of authority holds that he who purchases for a valuable consideration a certificate of stock is protected in his ownership of the stock and is not affected by a subsequent attachment or execution levied on such stock for the debts of the registered stockholder, even though such purchaser has neglected to have his transfer registered on the corporate books. The law favors the transfer of stock certificates, and discountenances, so far as possible, all secret dangers incurred in their purchase. By protecting the purchaser against subsequent attachments and executions, the law removes one of the chief risks incurred in holding certificates and desirability of such investments." Cook on Corporations, section 487.

"The custom of dealing with stocks by transferring the certificates in so general, and the inconvenience of requiring each transfer to be recorded is so great, that

the legislatures have in some instances, even where the courts have held registry to be necessary, interposed to afford relief." 67 L. R. A. 683.

The later and better view then seems to be that shares of stock are personal property that certificates are the indicia of the ownership of the shares; that when the stock is issued by means of the issuance of certificates the shares follow the certificates, and to that extent the certificates themselves, since the stock cannot otherwise be represented, for physical possession, become personal property; that the corporation has lost control of the shares by the issuance of the certificates except such control as is necessary for its protection as to corporate acts; that the shares may be transferred by delivery of the certificates properly endorsed; that the ownership of the shares is made apparent by the possession of the certificates bona fide; that this view is a necessary outgrowth of trade relations and the attitude of the public toward stock certificates and that any other view is contrary to public policy; that this view is especially binding upon those states in which legislatures have declared shares of stock when issued to be personal estate; that though the legislature may possibly have intended a different rule in this state as to domestic corporations, it has not seen fit to domesticate foreign corporations; and that therefore the shares of stock of foreign corporations are exempt from attachment except such as may be directed against the certificates themselves.

No order, therefore, will be issued under this proceeding to compel the aforesaid corporations to deliver certificates for the stock sought to be levied upon in the above entitled cases.

We wish to thank the people for their generous patronage Saturday. Our store was packed all day and although we had extra clerks we could not give all the proper attention. The big sale will continue until next Saturday night. Come again and again. Peart's, phone 932. 5-10-11

STOCK MARKET

Tonopah Mining advanced \$1.20. Belmont advanced twenty-five cents. Extension advanced, eighteen cents. Montana advanced eleven cents. MacNamara advanced six cents. West End advanced four cents. Midway advanced two cents. Jim Butler advanced three cents. Taken as a total the stock market went up \$1.89 cents yesterday and at the end of the day was still a going. The sales for the day as received in this city, are as follows:

Midway—3,500 at 27, 7,700 at 28, 2,000 at 30.
Belmont—500 at \$3.40, 700 at \$3.45, 200 at \$3.47½, 200 at \$3.50, 900 at \$3.62½, 500 at \$3.67½.
Jim Butler—6,000 at 18, 3,000 at 19.
West End—500 at 40.
Tonopah Mining—200 at 9.
Mizpah Ex.—7,000 at 10, 3,000 at 11.
Tonopah Ex.—900 at \$1.
The following quotations furnished by H. E. Epstine, broker:

Tonopah District.	
Tonopah Mining	\$8.95
Moniana	.95
Tonopah Ex.	.98
MacNamara	.31
Midway	.28
Belmont	3.50
North Star	.03
West End	.40
Rescue	.02
Jim Butler	.19
Mizpah Ex.	.11
Goldfield District.	
Goldfield Con.	8.10
Booth	.13
Blue Bull	.04
Atlanta	.13
Florence	2.17½
Comb. Frac.	.47
Kewanas	.05
Jumbo Ex.	.23
Miscellaneous.	
Pittsburg-Silver Pk.	.65
Manhattan Con.	.02
Manhattan Dexter	.04

Fresh buttermilk at the Tonopah dairy. 5-4-tf

(PERSONAL)

B. C. Downing, the Round Mountain mining man, is in town on a business trip.

Frank Lane, who is operating mining property at Lone Mountain, is spending a few days in Tonopah.

E. E. Burdick, who now resides at Big Pine, California, arrived from that place Sunday and will remain here for a short time.

E. E. Palmer of Beatty came up yesterday from the south section of the county to be present at the drawing of the grand jury, of which he is a member.

Hon. J. B. Giffen, speaker of the last assembly, came in from Manhattan Sunday evening and will remain here indefinitely, having been drawn on the grand jury.

J. R. Balliet, who accompanied the remains of his father back to Des Moines two weeks ago, returned from his sad journey yesterday. He was accompanied by Mrs. Balliet, who has been visiting in Yerington.

Colonel J. W. F. Diss of Los Angeles, who is heavily interested in mining property in the Manhattan district, after spending a week in the northern camp, came in to Tonopah Sunday and departed yesterday morning for his home.

Mrs. La Forga Jones, wife of Judge W. D. Jones of Reno, and who occupies the position of grand chief of the Pythian Sisters for this state, will arrive from the north today and tonight will be entertained by the local temple of Pythian Sisters. Mrs. Jones is on her tour of the state temples.

IS SUFFERING FROM DOUBLE PNEUMONIA

A miner named Manion, who is a brother to the shift boss at the MacNamara, was taken to the Miners' hospital yesterday suffering from pneumonia and is reported to be in a very serious condition. The disease might be termed double pneumonia, for both lungs are affected. He is being treated by Dr. Clark.

Fresh buttermilk at the Tonopah dairy. 5-4-tf



FREE! FREE!

This Week

With Every \$20 or \$25 Spring Suit we will give away a pair of \$5.00 Barry Shoes or a Stetson Hat.

Barry Shoes
FREE!



Stetson Hats
FREE!

A Live Special also for this Week will be our \$3.50 and \$4 line of Digging Shoes at \$2.95

MORROW & HUSSEY

